IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE V.GIRI

WEDNESDAY, THE 31ST OCTOBER 2007 / 9TH KARTHIKA 1929

WP(C).No. 5774 of 2007(K)

PETITIONER:

JOSE GEORGE, EX-STEWARD I,
MANIYAMKOTTIL HOUSE, IRUMPANAM P.O.,
KOLLANPADY JUNCTION, CHITHRAPUZHA, ERNAKULAM DISTRICT.

BY ADV. SRI.GEORGE JACOB (JOSE)
SMT.RESHMI POULOSE

RESPONDENTS:
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1. UNION OF INDIA REPRESENTED BY THE SECRETARY TO GOVERNMENT, MINISTRY OF DEFENCE, NEW DELHI.

2. CHIEF OF THE NAVAL STAFF, NAVAL QUARTERS, NEW DELHI.

3. COMMODRE BUREAU OF SAILORS, CHEETAH CAMP, MANKHRD, MUMBAI-400 088.

4. FLAG OFFICER COMMANDING-IN-CHEIF, SOUTHERN NAVAL COMMAND, COCHIN-4.

5. THE COMMANDING OFFICER, INDIAN NAVAL SHIP, VANDURUTHY, SOUTHERN NAVAL COMMAND, COCHIN.

BY ADV. SRI.TPM.IBRAHIM KHAN,SENIOR PANEL COUNS
ADV. SRI.A.SUDHI VASUDEVAN, ADDL.CGSC

THIS WRIT PETITION (CIVIL) HAVING BEEN FINALLY HEARD ON 31/10/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

WP(C) NO: 5774/2007

APPENDIX

PETITIONER'S EXHIBITS /ANNEXURE

EXT.P1. COPY OF THE SUMMARY OFEVIDENCE DT. 18/1/95.

EXT.P2. COPY OF THE PUNISHMENT WARRANT ISUED TO THE PETITIONER ACCEPTING THE RECOMMENDATION OF THE R5.

EXT.P3. COPY OF THE CERTIFICATE DT. 13/09/95 DISCHARGING THE PETITIONER FROM THE NAVAL SERVICE.

EXT.P4. COPY OF THE PETITION DT. 24/10/95 TO THE PETITIONER.

EXT.P5. COPY OF THE COMMUNICATION DT. 26.3.96 BY THE R2.

EXT.P6. COPY OF THE ORDER DT. 21/3/96 BY THE DESK OFFICER, MINISTRY OF DEFENCE TO THE PETITIONER.

EXT.P7. COPY OF THE JUDGMENT DT. 14/09/98 IN OP NO. 8427/96

EXT.P8. COPY OF THE COMMUNICATION DT. 10/12/98 OF THE R2.

EXT.P9. COPY OF THE ORDER DT. 9/12/98 ALONG WITH EXT. P8 TO THE PETITIONER.

EXT.P10. COPY OF THE JUDGMENT DT. 15/12/2006 IN OP NO. 18488/00.

EXT.P11. COPY OF THE DEPOSITION OF SRI. THOMSON FRANCIS IN THE SUMMARY TRIAL.

EXT.P12. COPY OF THE STATEMENT IN THE SUMMARY TRIAL OF THE PETITIONER.

EXT.P13. COPY OF THE STATEMENT IN THE SUMMARY TRIAL OF THE COMPLAINANT.

EXT.P14. COPY OF THE DEPOSITION OF WITNESS NO. 5 IN THE SUMMARY TRIAL.

EXT.P15. COPY OF THE DEPOSITION OF WITNESS NO. 6 IN THE SUMMARY TRIAL.

EXT.P16. COPY OF THE DEPOSITION OF WITNESS NO. 7 IN THE SUMMARY TRIAL.

EXT.P17. COPY OF THE DEPOSITION OF WITNESS NO. 8 ON THE SUMMARY TRIAL.

EXT.P18. COPY OF THE DEPOSITION OF WITNESS NO. 9 IN THE SUMMARY TRIAL.

EXT.P19. COPY OF THE STATEMENT GIVEN BY SRI. KANWAR, PETTY OFFICER (STEWARD).

EXT.P20. COPY OF THE JUDGMENT DT. 17/6/2005 IN WPC NO. 36237/2003.

ANNEXURE-A: COPY OF THE JUDGMENT IN RP NO. 118/2007 DT. 14/2/2007 OF THIS COURT.

True copy

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V. GIRI ,J.

WP(C).NO. 5774 of 2007

Dated this the 2nd day of November, 2007

JUDGMENT

The petitioner, while employed in the Indian Naval Service (INS), Venduruthy, Kochi, was proceeded against under Section 93(2) of the Navy Act, inter alia, on the allegation that he hatched a conspiracy with one Francis, a driver and beat up his superior officer one Mr.S.Rodrigues. Mr. Rodrigues had filed a complaint against the said two persons which led to a summary procedure, stated to have been recorded in Ext.P1. Four punishments were imposed on the petitioner, namely, **(a)** imprisonment for 90 days (No.1) **(b)** Dismissal from Naval Service (No.3) **(c)** Reduction in rank for Steward First Class (No.4) **(d)** Deprivation of Second and First Good Conduct Badge (No.9). By Ext.P3, the petitioner was discharged from the Navy, consequent upon dismissal from service.

2. This was challenged by him under Section 162 of the Navy Act before the Central Government as evidenced by Ext.P4. Originally, Ext.P4 was rejected under Ext.P5 order which was challenged in O.P.8427/1996. This Court found that the appellate order does not contain any consideration of the contentions of the petitioner. Accordingly, the same was set aside and the government was directed

to consider the petitioner's appeal afresh.

3. The appeal was again considered and Ext.P9 order was passed again rejecting the petitioner's appeal. The same was challenged in O.P.18488/2000. When the said writ petition came up for hearing, this Court noted that the petitioner has not chosen to produce the original orders in the court martial proceedings (This court proceeded on the premise that Ext.P1 is a court martial) nor the dismissal order, without challenging which the petitioner cannot succeed in the original petition, since the reasons for confirming the action taken against the petitioner can be ascertained only from those orders. Accordingly, the writ petition was dismissed under Ext.P10 judgment.

4. Thereafter the petitioner has fled the instant writ petition, challenging Exts.P1 to P3 and the order passed by the Central Government.

5. A counter affidavit has been filed by the respondents inter alia contending that Ext.P10 judgment settled the issues between the parties and the same, at any rate, constitutes res judicata insofar as the present writ petition is concerned. It is further contended that the provisions of the Navy Act were complied with. All relevant contentions were considered by the central government while passing Ext.P7 order.

6. Insofar as the contention regarding res judicata is concerned, I am of the view that this Court had, in Ext.P10 judgment, declined to consider the merits of the contentions raised by the petitioner, essentially, on the premise that the petitioner had failed to produce the original order passed against him. In other words, this Court had declined to consider the correctness of the appellate order Ext.P7, because the original orders were neither produced nor challenged before this Court. At any rate, this court had declined jurisdiction not on an appraisal on the merits of the contentions, but on the premise that the original orders which had led to Ext.P7 were neither produced nor challenged in the writ petition. In the circumstances, there are no findings on the merits of the contentions raised by the petitioner either with regard to the original order or with regard to the appellate order, Ext.P10 judgment cannot be considered as one which constitutes res-judicata insofar as the present writ petition is concerned.

7. Learned counsel for the petitioner contends that several contentions were urged in the appeal before the central government. He particularly refers to section 85(1) of the Navy Act which mandates that the grounds of detention should be furnished to the delinquent. He also refers to section 101 which states that grounds of imprisonment should be furnished to the person who is imprisoned.

But they do not seem to be considered in Ext.P7.

8. In Ext.P7 judgment, this court had noted that the appellate order which was impugned therein did not reflect consideration of the contentions of the petitioner. In my view, the same infirmity would attach to the present order Ext.P9 also. There is nothing in Ext.P9 which reflects consideration of the contentions of the petitioner.

9. I am therefore of the view that the central government must be directed to reconsider Ext.P4. The writ petition is therefore allowed in part. Ext.P9 order is set aside and the first respondent is directed to reconsider Ext.P4 appeal and pass a fresh order, after hearing the petitioner, within a period of four months from the date of receipt of a copy of this judgment. Petitioner may, if so advised, file an additional affidavit raising any additional contentions.

V. GIRI, JUDGE

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